

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

GAREGIN SPARTALIAN,

Plaintiff,

v.

CITIBANK, N.A., et al,

Defendants.

Case No. 2:12-cv-00742-MMD-PAL

ORDER

(Defs.' Motions for Summary Judgment –  
dkt. nos. 51, 53)

(Plf.'s Motions for Continued Discovery –  
dkt. no. 68, 70).

**I. SUMMARY**

Before the Court is Defendant Citibank N.A.'s ("Citibank") Motion for Summary Judgment (dkt. no. 51), and Defendants The Law Offices of Rausch, Sturm, Israel, Enerson, & Hornick, LLC, Megan Hummel, Esq., Richard A. Russell, Esq., and Shelley L. Lanzkowsky's (collectively "Law Firm") Motion for Summary Judgment. (Dkt. no. 53.) Also before the Court is Plaintiff Garegin Spartalian's ("Spartalian") Motions for Continuance to Obtain Evidence and Continuance of Discovery. (Dkts. no. 68, 70.) The Court has also considered the respective oppositions and replies. For the reasons discussed below, Defendants' Motions are granted and Plaintiff's Motions are denied.

**II. BACKGROUND**

**A. Factual Background**

This is a case involving an allegedly unpaid debt. Citibank issued a credit card to Spartalian, who eventually failed to make timely payments. Citibank hired Law Firm to collect the debt. Law Firm sent an initial demand for payment to Spartalian on May 31, 2011, but the letter was never received. On July 13, 2011, Law Firm sent a second letter

1 offering to settle the debt. On July 18, 2011, Spartalian sent a demand for debt  
2 verification to Law Firm via certified mail. On October 7, 2011, Law Firm sent verification  
3 to Spartalian. After Spartalian failed to remit the payment amount, Citibank through its  
4 agent, Law Firm, filed a lawsuit against Spartalian. Law Firm enlisted the services of  
5 Defendant Wagner to serve the summons and complaint. Wagner allegedly left a copy of  
6 the summons and complaint on the ground in front of Spartalian's home and falsified the  
7 Affidavit of Service.

#### 8 **B. Procedural Background**

9 On May 3, 2012, Spartalian filed suit alleging seven claims: (1) violations of the  
10 Fair Debt Collections Practices Act ("FDCPA"), (2) violations of NRS § 649.370, based  
11 upon FDCPA violations, (3) fraud, (4) negligence, (5) violations of the Fair Credit  
12 Reporting Act ("FCRA"), (6) defamation, and (7) invasion of privacy/false light against  
13 Defendants Citibank, Law Firm, and JJJ Process Corporation, Scott Levine, Joel  
14 Rosenthal, and Robert Wagner (collectively "Process Servers"). On August 15, 2012,  
15 Spartalian voluntarily dismissed all claims against the Process Servers. The Court  
16 approved voluntary dismissal of the Process Servers via minute order on October 23,  
17 2012.

18 On February 13, 2013, upon Law Firm's Partial Motion to Dismiss, the Court  
19 partially dismissed several claims against Law Firm. The Court dismissed claims 1 and 2  
20 with prejudice to the extent that the claims relied on the actions of the Process Servers.  
21 The Court also dismissed claim 3 without prejudice for failure to state a claim and claim  
22 4 with prejudice as legally pre-empted. Spartalian failed to amend claim 3 by the Court's  
23 March 7, 2013, deadline for amendment. (Dkt. no. 64.) Therefore, as to Law Firm, claims  
24 1 and 2 as they related to the mailing of the allegedly defective notice of debt remained,  
25 as did claims 5, 6, and 7.

26 Now, Citibank seeks summary judgment on all claims, and Law Firm seeks  
27 summary judgment on claims 1, 2, 5, 6, and 7. Spartalian opposes the motions, requests

28 ///

1 continuances for additional discovery, and requests the Court to set aside his voluntarily  
2 dismissal of Process Servers.

### 3 **III. LEGAL STANDARD**

4 The Federal Rules of Civil Procedure provide for summary adjudication when the  
5 pleadings, depositions, answers to interrogatories, and admissions on file, together with  
6 the affidavits, if any, show that "there is no genuine dispute as to any material fact and  
7 the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56. A dispute as  
8 to a material fact is genuine if there is sufficient evidence for a reasonable jury to return a  
9 verdict for the nonmoving party. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248  
10 (1986). A principal purpose of summary judgment is "to isolate and dispose of factually  
11 unsupported claims." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986).

12 In determining summary judgment, a court applies a burden-shifting analysis. "In  
13 order to carry its burden of production, the moving party must either produce evidence  
14 negating an essential element of the nonmoving party's claim or defense or show that  
15 the nonmoving party does not have enough evidence of an essential element to carry its  
16 ultimate burden of persuasion at trial." *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210  
17 F.3d 1099, 1102 (9th Cir. 2000). Once the moving party satisfies Rule 56's requirements,  
18 the burden shifts to the party resisting the motion to "set forth specific facts showing that  
19 there is a genuine issue for trial." *Anderson*, 477 U.S. at 256. The nonmoving party "may  
20 not rely on denials in the pleadings but must produce specific evidence, through  
21 affidavits or admissible discovery material, to show that the dispute exists," *Bhan v. NME*  
22 *Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991), and "must do more than simply show  
23 that there is some metaphysical doubt as to the material facts." *Orr v. Bank of Am.*, 285  
24 F.3d 764, 783 (9th Cir. 2002) (internal citations omitted).

25 In determining a summary judgment motion, the Court may only consider  
26 admissible evidence. Fed. R. Civ. P. 56(e), *Beyene v. Coleman Sec. Servs., Inc.*, 854  
27 F.2d 1179, 1181 (9th Cir. 1988). To be admissible, proper foundation must be laid and  
28 documents must be authenticated. *Id.*, *Canada v. Blain's Helicopters, Inc.*, 831 F.2d 920,

1 925 (9th Cir. 1987). In a summary judgment motion, documents authenticated through  
2 personal knowledge must be “attached to an affidavit that meets the requirements of  
3 [Fed.R.Civ.P.] 56(e) and the affiant must be a person through whom the exhibits could  
4 be admitted into evidence.” *Canada*, 831 F.2d at 925 (9th Cir. 1987).

5 *Pro se* complaints are subject to “less stringent standards than formal pleadings  
6 drafted by lawyers” and should be “liberally construed.” *Erickson v. Pardus*, 551 U.S. 89,  
7 94 (2007) (citation omitted). However, *pro se* litigants are not entitled to lenient  
8 evidentiary standards for the purposes of summary judgment motions. *Jacobsen v. Filler*,  
9 790 F.2d 1362, 1364-65 (holding “[f]irst and foremost is that *pro se* litigants in the  
10 ordinary civil case should not be treated more favorably than parties with attorneys of  
11 record.”). Trial courts are under no obligation to advocate for, assist, or guide *pro se*  
12 litigants through the trial process. *Id.* at fn.5. Therefore, if a *pro se* litigant fails to offer  
13 admissible evidence to defeat a motion for summary judgment, the remedy “is to move  
14 to reconsider or to set aside; it is not for the trial court to inject itself into the adversary  
15 process on behalf of one class of litigant.” *Id.* at 1365.

#### 16 **IV. ANALYSIS**

##### 17 **A. Claims 1 And 2 – FDCPA and NRS § 649.370 Violations**

18 As discussed in the Court’s February 13, 2013, Order, Spartalian has failed to  
19 state a claim sufficient to impute liability to Defendants under the FDCPA and Nevada  
20 law for the allegedly wrongful actions of Wagner in his role as a process server and  
21 agent of the Defendants. Therefore, to the extent that these claims rely on the actions of  
22 the Process Servers, Citibank and Law Firm are entitled to judgment as a matter of law  
23 and summary judgment is granted. As to both Citibank and Law Firm, the claims relating  
24 to the alleged defective notice of debt remain to be adjudicated.

##### 25 **1. Against Defendant Citibank**

26 To prevail on an FDCPA claim, the plaintiff must prove: 1) the defendant is a “debt  
27 collector” as defined by the FDCPA, 2) plaintiff was the object of defendant’s debt  
28 collection activity, and 3) the defendant violated some duty or prohibition of the FDCPA.

1 See 15 U.S.C. § 1692k. The FDCPA defines the phrase “debt collector” to include: (1)  
2 “any person who uses any instrumentality of interstate commerce or the mails in any  
3 business the principal purpose of which is the collection of any debts,” and (2) any  
4 person “who regularly collects or attempts to collect, directly or indirectly, debts owed or  
5 due or asserted to be owed or due another.” 15 U.S.C. § 1692a(6). A “creditor” is defined  
6 as “any person who offers or extends credit creating a debt or to whom a debt is owed,  
7 but such term does not include any person to the extent that he receives an assignment  
8 or transfer of a debt in default solely for the purpose of facilitating collection of such debt  
9 for another.” 15 U.S.C. § 1692a(4). The text of the FDCPA, as well as its legislative  
10 history, makes clear that Congress did not intend the Act to encompass creditors. See  
11 S.Rep. No. 95-382, at \*2, U.S. Code Cong. & Admin. News 1977, pp. 1695, 97 (“The  
12 committee intends the term ‘debt collector,’ . . . to cover all third persons who regularly  
13 collect debts for others. The primary persons intended to be covered are independent  
14 debt collectors.”)

15 Here, Citibank is a creditor, not a debt collector, because the Complaint alleges  
16 Citibank “issued its credit card . . . to the Plaintiff.” (Dkt. no. 1 at ¶ 13.) Spartalian  
17 concedes that Citibank is “as a matter of law, exempt under the FDCPA on the basis that  
18 it is not a ‘debt collector.’” (Dkt. no. 69 at 2.) Instead, Spartalian attempts to reframe this  
19 cause of action against Citibank as one for “vicarious liability for the conduct of their legal  
20 counsel.” (Dkt. no. 69 at 2.) Even if a claim for vicarious liability is legally viable,  
21 Spartalian has failed to allege, let alone show by admissible evidence, that Citibank  
22 exercised control over Law Firm in the alleged culpable conduct so as to establish  
23 vicarious liability. See *Newman v. Checkrite Cal., Inc.*, 912 F.Supp. 1354, 1370 (Cal.  
24 1995). Spartalian has failed to allege or show Citibank manifested consent or specifically  
25 authorized Law Firm to hire Process Servers to effectuate allegedly fraudulent service.  
26 Citibank has shown Spartalian’s FDCPA claim against it fails as a matter of law.  
27 Spartalian has failed to resist Citibank’s Motion by setting forth any genuine issues for

28 ///

trial via admissible evidence, rather than mere denials and speculation. Accordingly, as to Citibank, summary judgment is granted on this claim.

## 2. Against Defendant Law Firm

The FDCPA provides:

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

- (1) the amount of the debt;
- (2) the name of the creditor to whom the debt is owed;
- (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

15 U.S.C. § 1692g. Section 1692g(a) requires only that a Notice be “sent” by a debt collector; a debt collector need not establish actual receipt by the debtor. While section 1692g(a) explicitly states that a Notice must be sent, “nowhere does the statute require receipt of the Notice.” *Mahon v. Credit Bureau of Placer Cty. Inc.*, 171 F.3d 1197, 1201 (9th Cir. 1999). Additionally, if “the consumer notifies the debt collector in writing within” thirty days of the initial communication that any portion of the debt is disputed or requests verification of the debt, the debt collector must cease collection activities until “the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor,” and it is mailed to the consumer by the debt collector. 15 U.S.C. § 1692g.

///



1 Here, Law Firm has carried its burden of negating Spartalian's FDCPA claim  
2 against it by producing evidence of a debt collection initial communication letter dated  
3 May 31, 2011,<sup>1</sup> the sworn affidavits of Shelley Lanzkowsky and Carrie Heckman  
4 attesting that the letter was sent to Plaintiff, and the letter dated October 7, 2011,  
5 verifying the debt. (Dkt. no. 53, Ex. D and E.) Spartalian failed to resist the motion  
6 showing a genuine issue for trial.

7 Spartalian has failed to raise a genuine issue of material fact to dispute that Law  
8 Firm sent him the required Notice. Law Firm's standard business practice established  
9 that the May 31, 2011, initial communication was sent to Plaintiff's home. (Dkt. no. 53,  
10 Ex. 5-F.) Law Firm's system generated the May 31, 2011, initial communication, and  
11 Carrie Heckman placed that letter in the outgoing mail sending it to Spartalian's  
12 attention. (Id.) Spartalian offered no evidence that Law Firm failed to follow its ordinary  
13 business procedure in sending the May 31, 2011, initial communication. Spartalian  
14 simply says he did not receive it. Moreover, the October 7, 2011, letter is a proper  
15 verification of the debt as it includes the creditor, amount of the debt, and billing  
16 statements evidencing the debt. (Dkt. no. 53 at Ex. J.) Spartalian's Opposition argues  
17 that the entire October 7, 2011, letter is called into question because there is a  
18 typographical discrepancy between the name of the person who signed the October 7,  
19 2011, letter and the person who Ms. Lanzkowsky said was her subordinate who signed  
20 the letter. Regardless of whether the person who sent the October 7, 2011, letter was  
21 Brandon E. Bowlin or Brandon E. Bowland, this typographical error does not change the  
22 fact that the October 7, 2011, letter constitutes proper verification. At best, Spartalian's  
23 Opposition and accompanying declaration simply raise his own speculation that there  
24

---

25 <sup>1</sup>Plaintiff moves to strike the May 31, 2011, initial communication challenging its  
26 authenticity based on Carrie Heckman's affidavit arguing that, because there is no "date  
27 sent" notation on the document itself, it is inadmissible under Federal Rule of Evidence  
28 1003. (Dkt. no. 67 at 5.) However, Plaintiff misconstrues the affidavit because Ms.  
Heckman did not attest to dating the document, but rather placing a notation in the file.  
(Dkt. no. 53 at Ex. 5-F.) Therefore, Plaintiff's request is denied.

1 may be a genuine issue of fact or some metaphysical doubt as to the material facts. This  
2 is insufficient to defeat summary judgment. Moreover, reviewing the May 31, 2011, and  
3 October 7, 2011, letters show that Law Firm complied with the FDCPA by giving required  
4 admonitions and verifying the debt. Thus, Law Firm is entitled to judgment as a matter of  
5 law.

6 **B. Claim 3 – Fraud**

7 This claim has already been dismissed against Law Firm for failure to state a  
8 claim, and may be dismissed against Citibank for the same reasons. Spartalian failed to  
9 amend the claim to cure its deficiencies within the timeframe allowed by the Court.  
10 Accordingly, as Spartalian has failed to state a viable claim for relief and has failed to  
11 cure the deficiencies, Citibank and Law Firm are entitled to judgment as a matter of law  
12 and summary judgment is granted.

13 **C. Claim 5 – FCRA Violations**

14 The FCRA creates duties for furnishers of information to credit reporting agencies.  
15 15 U.S.C. § 1681s-2. Although there is no private right of action under § 1681s-2(a),  
16 *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1162 (9th Cir. 2009), § 1681s-  
17 2(b)(1) triggers duties when furnishers of information receive notice from the Credit  
18 Reporting Agency (“CRA”) that the consumer disputes the information. *Gorman*, 584  
19 F.3d at 1154.

20 Here, Spartalian’s claim against Citibank and the Law Firm fail because  
21 Spartalian concedes that he did not notify the CRA of the dispute such to trigger  
22 Defendants’ duties under the FCRA. See Dkt. no. 51, Ex. A, Spartalian Dep. Vol. 1 at 46-  
23 47; Dkt. no. 53, Ex. 2, Spartalian Dep. Vol. 2 at 84-85, 122. Spartalian’s argument that  
24 Defendants’ alleged failure to verify the debt makes the debt uncollectable, and therefore  
25 any adverse credit reporting actionable, is unsupported by legal authority. Moreover, as  
26 discussed above, Law Firm did verify the debt, thus Spartalian’s argument is unavailing.  
27 As Spartalian did not take appropriate action to trigger Defendants’ duties under the  
28 FCRA, Citibank and Law Firm are entitled to judgment as a matter of law.



**D. Claims 4, 6, And 7 – Negligence, Defamation, and Invasion of Privacy and False Light**

As discussed in the Court's February 13, 2013, order, the FCRA preempts state law claims for "defamation, invasion of privacy, or negligence" and then only to the extent that those claims are based on the disclosure of FCRA information and are not based on malice or willful intent to injure. 15 U.S.C. § 1681h(e) and § 1681t(b)(1)(F). Thus, the FCRA preempts a plaintiff from bringing any state law claim based on conduct covered by Section 1681s-2. See *Subhani v. JPMorgan Chase Bank, Nat. Ass'n*, No. C 12-01857 WHA, 2012 WL 1980416, at \*5-6 (N.D. Cal June 1, 2012) (containing a thorough discussion of 9th Circuit FCRA pre-emption interpretation).

Here, almost all of Spartalian's claims for relief are based on state laws relating to activity covered by Section 1681s-2, that is, conduct relating to a furnisher's responsibilities to provide accurate information and conduct reasonable investigations following a dispute. For the negligence claim, as to the list of duties alleged, only one is not subsumed and pre-empted by the FCRA, and that duty is not recognized as a statutory duty under Nevada law. (Dkt. no. 59, 9-10.)<sup>2</sup> Moreover, the defamation claim and invasion of privacy claims arise from alleged failures in providing accurate information, which falls squarely within the ambit of the FCRA. Therefore, as these claims are pre-empted, Citibank and Law Firm are entitled to judgment as a matter of law and summary judgment is granted.

**E. Plaintiff's Request for Continuances and Additional Discovery**

Spartalian seeks the extension of discovery deadlines under Federal Rule of Civil Procedure 56 and a continuance to be able to take several depositions and then amend

---

<sup>2</sup>The only alleged duty that is not pre-empted is the "statutory duty of care to make sure that should the (sic) hire a legal process server who was truthful, honest and not deceiving in the practice and execution of his/her statutory duty for the service of summons and complaint." (Dkt. no. 1 at at ¶ 57, 59). However, as discussed in the Court's February 13, 2013, Order, Nevada law does not recognize the duty alleged in the Complaint as applied to debt collectors.

1 his complaint to state a claim. Although Rule 56 allows for the Court to defer judgment  
2 on the summary judgment motion, or extensions of time to take additional discovery, the  
3 Court may properly deny the request for additional discovery “if the movant can[not]  
4 show how allowing additional discovery would have precluded summary judgment.” *Byrd*  
5 *v. Guess*, 137 F.3d 1126, 1135 (9th Cir. 1998) (quotation marks omitted), superseded by  
6 statute on other grounds.

7 Here, the request is denied for two reasons. First, the Court has already granted  
8 an extension of discovery deadlines by joint stipulation of the parties, and continued the  
9 disclosure deadlines due to Spartalian’s failure to serve initial disclosures. (Dkt. nos. 48,  
10 65). Spartalian seeks additional discovery based on his misreading of Ms. Beckman’s  
11 affidavit, which the Court has already addressed, and to discover if Process Servers  
12 have committed perjury in other instances, which is irrelevant to this case. Spartalian  
13 seeks extra time to discover testimony that he says is “fundamental” to his lawsuit but  
14 that he did not request until after the close of discovery and the filing of summary  
15 judgment motions. The parties have conducted extensive discovery, and the Court  
16 granted an extension of time to oppose summary judgment. Any further extensions  
17 would merely result in undue delay. Second, the Court has already instructed Spartalian  
18 that he could have filed a Motion for Leave to Amend the Complaint, but had to do so by  
19 March 7, 2013. (Dkt. no. 64.) Spartalian failed to do so. Allowing amendment this late in  
20 the litigation and after the close of discovery would result in prejudice to the Defendants.  
21 Therefore, the request for additional discovery to enable Spartalian to amend his  
22 complaint is denied.

#### 23 **F. Plaintiff’s Request to Set Aside Voluntary Dismissal**

24 Spartalian seeks to set aside the voluntary dismissal of claims against Process  
25 Servers because he “mistakenly” dismissed them. Spartalian argues his reinstatement  
26 application is timely and would not result in prejudice to the Process Servers. However,  
27 as Spartalian included this request in his Opposition to Law Firm’s Motion for Summary  
28 Judgment, there has been no opposition. When Spartalian sought to voluntarily dismiss

1 the claims against Process Servers, there was a pending motion to dismiss. (Dkt. no.  
2 28). Spartalian did not oppose that motion to dismiss. Instead based on Spartalian's  
3 voluntary dismissal, the Court granted the motion to dismiss filed by Process Servers. To  
4 reinstate these claims against Process Servers when discovery has now closed,  
5 Spartalian must move to amend his complaint, or file a new action. Therefore, this  
6 request is denied as procedurally improper.

7 **V. CONCLUSION**


8 It is therefore ordered that Defendant Citibank N.A.'s Motion for Summary  
9 Judgment (dkt. no. 51) is granted.

10 It is further ordered that Defendants The Law Offices of Rausch, Sturm, Israel,  
11 Enerson, & Hornick, LLC, Megan Hummel, Esq., Richard A. Russell, Esq., and Shelley  
12 L. Lanzkowsky's Motion for Summary Judgment (dkt. no. 53) is granted.

13 It is further ordered that Plaintiff Garegin Spartalian's Motions for Continuance to  
14 Obtain Evidence and Continuance of Discovery (dkt. no. 68 and 70) are denied.

15 The Clerk is instructed to enter judgment in favor Defendants in accordance with  
16 this Order and to close this case.

17 DATED THIS 27<sup>th</sup> day of September 2013.

18   
19 \_\_\_\_\_  
20 MIRANDA M. DU  
21 UNITED STATES DISTRICT JUDGE  
22  
23  
24  
25  
26  
27  
28